INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	4
Reasons for granting the writ	5

CITATIONS

Cases:

Helvering v. Mercantile State Life Ins. Co., 49 F. (2d) 113	5
MacLennan v. Commissioner, 20 B. T. A. 900	5
Missouri Cooperage Co. v. Commissioner, 1 B. T. A. 706	5
National Life Ins. Co. v. United States, 44 F. Supp. 1000, certiorari denied, sub nom. *Darcy v. United States*, 291 U. S. 654	5
Rose v. Penn Life Insurance Co. v. Commissioner, 13 B. T. A. 350	5

Statute:

Revenue Act of 1928, c. 852, 45 Stat. 791	
Sec. 201	2
Sec. 202	2

84944 38

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. ——

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE MIDLAND MUTUAL LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered in the above-entitled cause on May 6, 1936.

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 11–14) is unreported. The opinion of the Circuit Court of Appeals is reported in 83 F. (2d) 629.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 6, 1936. The jurisdiction of this

Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether accrued interest on loans secured by mortgages constitutes taxable income to the mortgagee when the mortgagee acquires title to the mortgaged properties upon foreclosure by bidding them in at the foreclosure sales for an amount equal to the loans and accrued interest.

STATUTE INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 201. TAX ON LIFE INSURANCE COMPANIES.

* * * * *

(b) *Rate of tax.* In lieu of the tax imposed by section 13, there shall be levied, collected, and paid for each taxable year upon the net income of every life insurance company a tax as follows:

(1) In the case of a domestic life insurance company, 12 per centum of its net income;

* * * * *

SEC. 202. GROSS INCOME OF LIFE INSURANCE COMPANIES.

(a) In the case of a life insurance company the term "gross income" means the gross income received during the taxable gross amount of income received during the taxable year from interest, dividends, and rents.

STATEMENT

The stipulation of facts (R. 16–18) was adopted by the Board of Tax Appeals as its findings of fact (R. 11–13), and is as follows:

The respondent is an Ohio corporation and has its principal place of business at Columbus, Ohio. During the year 1930 there was due the respondent upon loans secured by real-estate mortgages in Michigan and Ohio, interest in the amount of $5,456.99. As these loans were in default in that year, the respondent foreclosed its mortgages and at the foreclosure sales, bid in the various pieces of real estate for amounts equaling the principal of the loans, plus the interest thereon.

Upon receipt of the title to such property, the respondent transferred the investments on its books from the mortgage-loan account to the real-estate account and carried such assets at amounts equaling the principal of the loans plus any disbursements which it had made for taxes, court costs, attorney fees, or insurance premiums for the preservation of the property, but the amounts of interest included in the bid at the foreclosure sales were not entered upon the books as a part of the cost of the properties or as an asset of the respondent. Nor did the respondent include such interest as an asset in its annual statement or convention report for the year 1930. Its books have been kept on a calendar year, cash basis.

The instructions issued to the respondent's representatives who have charge of the foreclosure of mortgages, in States where a period of redemption is allowed, are to bid at the sale under such foreclosure proceedings in behalf of the respondent such sum as will enable the respondent to realize no loss on account of its investment in case a redemption should be made from the foreclosure sale. Bids by the respondent's representatives have been made in accordance with these instructions, and the States in which the real estate here involved is located have laws allowing a period for redemption. The bids in respect of this real estate were made without regard to the actual value of the property, and the respondent was the only bidder at the foreclosure sales.

The Commissioner determined that the sum of $5,456.99 was taxable income to the respondent and should be included in its return for the year 1930. The Board approved this determination (R. 14). The Circuit Court of Appeals reversed the Board's decision (R. 25).

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the respondent did not realize taxable income, in an amount equal to the accrued interest on certain loans which it held and which were secured by mortgages, when it bid in the mortgaged properties at the foreclosure sales for an amount equal to the loans and accrued interest.

2. The Circuit Court of Appeals erred in reversing the decision of the Board.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below presents a direct conflict with the decisions in *Helvering* v. *Missouri State Life Ins. Co.*, 78 F. (2d) 778 (C. C. A. 8th), and *National Life Ins. Co.* v. *United States*, 4 F. Supp. 1000 (C. Cls.), certiorari denied, *sub nom., Lucey* v. *United States*, 291 U. S. 683. In those cases the facts were exactly like the facts here, and it was held by both courts that the amount of accrued interest included in the bid price constituted taxable income. The same conclusion has been reached by the Board of Tax Appeals in cases involving the question raised here. See *Manomet Cranberry Co.* v. *Commissioner*, 1 B. T. A. 706, 709; *Reserve Loan Life Insurance Co.* v. *Commissioner*, 18 B. T. A. 359, 370; *MacLennan* v. *Commissioner*, 20 B. T. A. 900.

2. The decision of the court below holding that no taxable income was received by the respondent is believed to be unsound. The transactions here involved were actual purchases and sales. The respondent, as mortgagee, had instituted foreclosure proceedings against the mortgagors, and, to satisfy the judgments obtained, public sales were held. At such sales the respondent's representatives bid amounts equaling the principal of the loans and interest. The bids could, of course, have equaled only the amount of the loans, but interest

was included because the respondent sought protection for itself in the event the mortgagors attempted to secure the property during the period of redemption.

The bidding in of the mortgaged properties by the respondent's representatives placed a valid and binding liability on the respondent for the entire amount of the prices bid. As a general rule an officer selling property under a foreclosure decree has no authority to sell on credit or to accept anything in payment other than lawful money, but as the respondent held claims for principal and interest against the mortgagors, it was allowed to offset such claims against the amounts it had bid. In each instance the bids equaled the claims so the result was that the respondent's claims were satisfied and the mortgagors' obligation to pay interest as well as principal was entirely extinguished.

The respondent then took title to the several pieces of property, not as mortgagee, but as purchaser and in exactly the same manner as a stranger would have, had he bid in the property. In other words, as the court stated in the case of *National Life Ins. Co., supra* (p. 1012), the transactions were no different in effect than if the respondent had paid the full amount of its bids in cash to the officers making the sales, and such officers had thereafter returned the money to the respondent in payment of the unpaid principal and interest. It is immaterial that the market values

may have been less than the prices bid. For purposes of these transactions the bids established the market. By offsetting its liability against its claims the respondent realized income to the extent of the accrued interest and is subject to tax on such amount.

3. The question here is one of importance, particularly in those States where the mortgagor has an equity of redemption, and bids including principal and interest are made with the local law in view.

Wherefore it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

AUGUST 1936.

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